

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

JEFFREY BLAKE GARANT,

Defendant-Appellee.

UNPUBLISHED

December 19, 2006

No. 264732

Oakland Circuit Court

LC No. 05-202364-FH

Before: Murphy, P.J., and Smolenski and Kelly, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order granting defendant's motion to quash the information and dismissing a charge of unarmed robbery, MCL 750.530. We reverse and remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant allegedly assisted Leslee Whitmer in taking a purse from complainant. At the preliminary examination, complainant testified that a couple approached her while she was placing groceries into her car, and asked if they could have her cart. As complainant turned to retrieve her last bags and her purse from the cart, the woman grabbed the purse. Complainant grabbed onto the purse as well. Defendant, who was described by complainant as standing over six feet tall and weighing approximately 240 pounds, initially stood approximately 20 feet away from the two women. Complainant told Whitmer to release her purse, but Whitmer would not do so. Complainant noticed defendant approach, thought that he was going to hit her, became frightened, and released the purse. When she did so, Whitmer fell to the ground. Defendant stepped between the two women and "right next to [complainant]" in her "personal space." Defendant told complainant to "leave her alone." Complainant feared that defendant would hit her, and moved away from Whitmer. Defendant helped Whitmer from the ground and the two left with complainant's purse.

We review a circuit court's decision to grant or deny a motion to quash an information de novo to determine if the district court abused its discretion in binding over a defendant for trial. *People v Green*, 260 Mich App 710, 714; 680 NW2d 477 (2004).

"A district court must bind a defendant over for trial when the prosecutor presents competent evidence constituting probable cause to believe that (1) a felony was committed and (2) the defendant committed that felony." *People v Northey*, 231 Mich App 568, 574; 591 NW2d 227 (1998). In order to bind the defendant over for trial the court is not required to find

that the evidence presented at the preliminary examination proves the defendant's guilt beyond a reasonable doubt. *People v Hudson*, 241 Mich App 268, 278; 615 NW2d 784 (2000). When deciding to bind a defendant over for trial, the magistrate may factor into its consideration direct or circumstantial evidence. *Id.*

"The elements of unarmed robbery are: (1) a felonious taking of property from another, (2) by force or violence or assault or putting in fear, and (3) being unarmed." *People v Johnson*, 206 Mich App 122, 125-126; 520 NW2d 672 (1994). Guilt as an aider and abettor is established upon proof that: (1) the substantive criminal offense was committed by the defendant or by another, (2) the defendant performed acts or gave encouragement which aided or assisted the commission of the crime, and (3) the defendant intended the commission of the crime or had knowledge that the principal intended its commission at the time of the giving of aid or encouragement. *People v Rockwell*, 188 Mich App 405, 470 NW2d 673 (1991).

Defendant relies on *People v Burrel*, 253 Mich 321, 323; 235 NW 170 (1931), and *People v Turner*, 125 Mich App 8, 11; 336 NW2d 217 (1983), to support his position that mere presence, even with knowledge of the fact that another is about to commit a crime, is insufficient to make a person an aider and abettor. However, contrary to defendant's assertion, the evidence established more than his "mere presence" at the time of the robbery.

For crimes occurring after July 1, 2004, unarmed robbery is regarded as a transactional offense. MCL 750.530(2). See *People v Morson*, 471 Mich 248, 265 n 2; 685 NW2d 203, 2004 (Corrigan, C.J., concurring). Here, defendant's actions in preventing complainant from regaining her purse could reasonably be seen as aiding Whitmer's attempt to retain possession of the purse. MCL 750.530(2). When defendant stepped in between the women, he both physically prevented complainant from continuing her attempt to keep her purse, and did so in what could reasonably be viewed as a threatening manner. Whether property is taken as a result of fear is determined from the victim's perspective. *People v Hearn*, 159 Mich App 275, 281; 406 NW2d 211 (1987). "When a person is induced to part with property out of fear, the test to determine whether a robbery has been committed is whether 'the party robbed has a reasonable belief that he may suffer injury unless he complies with the demand.'" *Id.*, quoting *People v Kruper*, 340 Mich 114, 121; 64 NW2d 629 (1954). A reasonable factfinder could determine that defendant's actions were threatening, given complainant's testimony, defendant's proximity at the time he told her to leave Whitmer alone, and defendant's significantly greater bulk. We are satisfied that the district court did not abuse its discretion by binding defendant over for trial on unarmed robbery charge. *Hudson*, *supra* at 278; *Johnson*, *supra* at 125-126.

Reversed and remanded for reinstatement of the charge. We do not retain jurisdiction.

/s/ William B. Murphy
/s/ Michael R. Smolenski
/s/ Kirsten Frank Kelly